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Attorneys for Defendants
C. R. Bard, Inc. and
Bard Peripheral Vascular, Inc.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

IN RE: Bard IVC Filters Products Liability
Litigation

No. 2:15-MD-02641-DGC

**DEFENDANTS' MOTION FOR
LEAVE TO FILE UNDER SEAL
EXHIBITS IN SUPPORT OF
BARD'S MOTION TO EXCLUDE
THE *TINLIN* CASE-SPECIFIC
OPINIONS OF ROBERT M.
MCMEEKING, PH.D.**

Defendants C. R. Bard, Inc. and Bard Peripheral Vascular, Inc. (collectively
“Bard”) hereby respectfully move this Court, pursuant to the Stipulated Protective Order
(Doc. 269), Federal Rule of Civil Procedure 26(c)(1)(G), and Local Civil Rule 5.6 for
leave to file under seal the exhibits attached in support of Bard’s Motion to Exclude the
Tinlin Case-Specific Opinions of Robert M. McMeeking, Ph.D., served on February 1,
2019. The exhibits to the Motion contain certain medical information, trade secrets, and

1 confidential information that are protected under the Stipulated Protective Order,
2 warranting protection from public disclosure. Accordingly, there is good cause to grant
3 Defendants' Motion for Leave to File Under Seal the Exhibits in Support of Bard's
4 Motion. Plaintiffs do not oppose this Motion. A list of the Exhibits sought to be sealed are
5 attached hereto as Exhibit A.

6 **ARGUMENT AND CITATION OF AUTHORITY**

7 "When a court grants a protective order for information produced during discovery,
8 it already has determined that 'good cause' exists to protect this information from being
9 disclosed to the public by balancing the needs for discovery against the need for
10 confidentiality." *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206,
11 1213 (9th Cir. 2002). *See also, Medicis Pharm. Corp. v. Acella Pharm., LLC*, CV 10-
12 1780-PHX-JAT, 2012 WL 2260928 at *2 (D. Ariz. June 15, 2012) (sealing exhibits
13 related to "Medicis' marketing strategy, Acella's product formulation,...various e-mails
14 and deposition transcripts, viscosity test data, sales and marketing information, and
15 various other documents" because "[m]uch of this information has been previously sealed
16 by the Court, has been designated as confidential by the parties pursuant to the protective
17 order in this case, or could otherwise potentially harm the parties if released publicly
18 because of its confidential and sensitive nature.").

19 The exhibits to Bard's Motion contain and recite pieces of highly competitive,
20 confidential, proprietary information that warrant protection under Federal Rule of Civil
21 Procedure 26(c)(1)(G) because the documents are not made public by Bard and, if
22 obtained by Bard's competitors, could give an unfair economic advantage to those
23 competitors. *Blanchard & Co., Inc. v. Barrick Gold Corp.*, No. 02-3721, 2004 WL
24 737485, at *5 (E.D. La. Apr. 5, 2004) (citing *Pansy v. Borough of Stroudsburg*, 23 F.3d
25 772, 786 (3d Cir. 1994)). The Exhibits cite and extensively quote dozens of confidential
26 Bard documents, including technical and design files, testing documents, internal adverse
27 event investigations and analysis, design and risk management documents, and numerous
28 internal e-mails between high-level Bard employees. The Reports quote so extensively

1 from confidential documents that filing the Reports is akin to filing the documents
 2 themselves. Except for a small number of publicly available documents, all of the Bard
 3 documents cited in the Reports were produced to Plaintiffs as “Confidential – Subject to
 4 Protective Order” on each page pursuant to Stipulated Protective Order (Doc. 269) ¶ 6.

5 The public disclosure of these exhibits would reveal confidential, proprietary and
 6 trade secret information and would create a heightened risk of irreparable harm to Bard’s
 7 competitive business concerns. Further, its inclusion in the public record would not only
 8 harm Bard because of the trade secrets and confidential information it contains, but it
 9 would also eviscerate the significant time and resources Bard has expended in protecting
 10 its business information.

11 Accordingly, good cause exists for sealing the Exhibits at issue.

12 RESPECTFULLY SUBMITTED this 1st day of February, 2019.

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EXHIBIT A

DOCUMENTS PROPOSED TO BE FILED UNDER SEAL

Defendants request they be permitted to file under seal the following documents:

1. Exhibit A to motion to exclude Dr. McMeeking – Dr. McMeeking’s
Tinlin Expert Report
2. Exhibit B to motion to exclude Dr. McMeeking – Portions of Dr.
Morris’s Expert Report
3. Exhibit C to motion to exclude Dr. McMeeking – Portions of Dr. Riebe’s
Deposition
4. Exhibit E to motion to exclude Dr. McMeeking – Portions of Dr. Hurst’s
Expert Report